

REMARKS

Claims 1-20 are currently pending in the present patent application. Claims 1-20 are rejected. Claims 1, 8 and 14 are amended herein. No new matter has been added. Applicants respectfully request further examination and reconsideration in view of the remarks set forth below.

Claim Rejections

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Claims 1-11 and 14-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Kazemi (7,089,281). The rejection is traversed for the following rational.

Applicants direct the Examiner to Independent Claim 1 that recites (emphasis added):

A method of dynamically balancing load in a system of servers, comprising:

- a) monitoring for servers that are able to respond to requests directed at the system, including actively discovering new servers in said system of servers;
- b) determining a performance metric for a first set of said servers discovered by said monitoring for the servers;
- c) maintaining a table comprising said performance metric for said first set of discovered servers; and
- d) in response to receiving a request, routing said request to a selected server in the system of servers based on said performance metric, wherein the system of servers comprises the first set of discovered servers.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” /Verdegaal Bros. v. Union Oil Co. of California/, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). ... “The identical invention must be shown in as complete detail as is contained in the ... claim.” /Richardson v. Suzuki Motor Co./, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim.

Applicants submit that Kazemi fails to teach each element of Independent Claim 1. Specifically, Applicant submits that Kazemi fails to teach or suggest (emphasis added) “monitoring for servers that are able to respond to requests directed at the system, including actively discovering new servers in said system of servers,” as claimed.

Applicants also submit that Kazemi fails to teach or suggest “determining a performance metric for the first set of servers discovered by said monitoring,” as claimed.

As stated previously, Kazemi is used for “storage resources” as opposed to server resources as with the present invention. Applicants would like to point out that there is a distinct difference between the two. For example, in a storage resource system, data that is stored on a server “a” can not be accessed from server “b” because the information is stored on server “a”. In a storage system redundancy is used to preserve data in case of failure. With a server resource environment, a request to perform an operation on server “a” can be routed to server “b” as long as server “b” has the required performance metric to respond to the request.

Applicant respectfully submits that Kazemi fails to teach or suggest “monitoring for servers that are able to respond to requests directed at the system including actively discovering new servers in said system of servers,” as claimed. In opposition to “monitoring” and “actively discovering” Kazemi relies on a passive system wherein the data storage units report available resources. Applicants submit that receiving reports is very different from actively discovering, as claimed.

In column 11, lines 26-31, Kazemi states “populating the resource table as information is received from servers 210 as they come online.” With Kazemi, the DSR relies on the servers themselves to report performance information. The passive DSR of Kazemi merely receives data from the servers and does not monitor or actively discover, as claimed.

Kazemi uses a DSR (dynamic session redirector) to provide a single system image for resources that are distributed on many different servers (summary of the invention). “The DSR examines the incoming requests and passes them on to the appropriate resources and then forwards the results of any request to the requesting client.” Kazemi teaches “DSR keeps a table of the resources provided by each network

storage device.” With Kazemi, the locations of resources are known and kept track of in a table. Kazemi fails to teach or suggest discovery of any kind.

In addition, Applicants submit that Kazemi fails to teach or suggest “determining a performance metric for the first set of servers discovered by said monitoring,” as claimed. With the present invention, monitoring is used to discover servers capable of responding to a requests including actively discovering new servers in the system of servers.

Performance metrics are then determined for the discovered servers. Applicants submit that Kazemi does not teach or suggest “discovering” servers. With Kazemi, the particular resources and associated servers are known and not discovered since Kazemi is dealing with a storage system and must know where the data is located in order to retrieve it. Furthermore, with Kazemi, the DSR requires the servers themselves to report the performance information which is clearly different from discovering, as claimed.

It is necessary for Kazemi to know where data is stored so the data can be retrieved since Kazemi deals with data storage systems. If Kazemi had to discover where the data was stored, the response time would be severely impacted.

For this rational, Independent Claim 1 is patentable over Kazemi. Independent Claims 1, 8 and 14 recite similar limitations and are also patentable over Kazemi. As such, Applicants submit that Claims 1-11 and 14-19 are patentable over Kazemi and respectfully request the rejection be removed.

Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kazemi in view of Logston (2004/0236860). The rejection is respectfully traversed for the following rational.

“As reiterated by the Supreme Court in *KSR*, the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). Obviousness is a question of law based on underlying factual inquiries” including “[a]scertaining the differences between the claimed invention and the prior art” (MPEP 2141(II)). “In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious” (emphasis in original; MPEP 2141.02(I)). Applicants note that “[t]he prior art reference (or references when combined) need not teach or suggest all the claim limitations, however, Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art” (emphasis added; MPEP 2141(III)).

As stated above, Kazemi fails to teach or suggest monitoring to discover servers, as claimed. Applicants submit that discovery would not be an obvious modification to Kazemi because Kazemi is directed to storage servers where discovery would significantly decrease performance. Applicants have reviewed Logston and submit that Logston fails to remedy the deficiencies of Kazemi. In particular, Applicants submit that Logston also fails to teach monitoring to discover servers, including actively discovering new servers in the system of servers, as claimed.

Logston may purport balancing distributed applications, however, Logston fails to teach or suggest monitoring to actively discover servers, as claimed.

For this rational, Claims 12-13 is patentable over Kazemi in view of Logston. As such, Applicants respectfully request the rejection be removed.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kazemi in view of Bonnell (2002/0178262). The rejection is respectfully traversed for the following rational.

"As reiterated by the Supreme Court in *KSR*, the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). Obviousness is a question of law based on underlying factual inquiries" including "[a]scertaining the differences between the claimed invention and the prior art" (MPEP 2141(II)). "In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious" (emphasis in original; MPEP 2141.02(I)). Applicants note that "[t]he prior art reference (or references when combined) need not teach or suggest all the claim limitations, however, Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art" (emphasis added; MPEP 2141(III)).

As stated above, Kazemi fails to teach or suggest monitoring to discover servers, as claimed. Applicants submit that discovery would not be an obvious modification to Kazemi because Kazemi is directed to storage servers where discovery would significantly decrease performance. Applicants have reviewed Bonnell and submit that Bonnell fails to remedy the deficiencies of Kazemi. In particular, Applicants submit that Bonnell also fails to teach monitoring to discover servers, including actively discovering new servers in the system of servers.

Bonnell may purport monitoring of server performance, however, Bonnell fails to teach or suggest monitoring to discover servers, as claimed.

For this rational, Claim 20 is patentable over Kazemi in view of Bonnell. As such, Applicants respectfully request the rejection be removed.

CONCLUSION

In light of the above remarks, Applicants respectfully request reconsideration of the rejected claims. Based on the remarks presented above, Applicants respectfully assert that Claims 1-20 overcome the rejections of record and, therefore, Applicants respectfully solicit allowance of these Claims.

The Examiner is invited to contact Applicants' undersigned representative if the Examiner believes such action would expedite resolution of the present application.

Respectfully submitted,
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